

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

EDDIE GARCIA,

Plaintiff,

vs.

Civil Action No.:

1:21-cv-06393-EAW

LEWIS TREE SERVICE, INC. and
ROBERT GASTON,

Defendants.

AFFIDAVIT OF ROBERT P. GASTON

STATE OF PENNSYLVANIA)
COUNTY OF Berks.) ss:

ROBERT P. GASTON, being duly sworn, deposes and states:

1. I am an individually-named Defendant in the above-captioned action. I submit this affidavit based on my personal knowledge in support of Defendants' motion to dismiss the Complaint as against me.

2. I have lived in Pennsylvania for my entire life. I have never been a resident of New York. I have never owned property in New York.

3. I have been employed by Defendant Lewis Tree Service, Inc. ("Lewis Tree") since January 19, 2009. I was initially hired as a Foreman. After about a year of employment I was promoted to General Foreman, and have been in that position ever since.

4. For the entire 12 years and approximately seven months that I have been employed by Lewis Tree, I have performed all of my work exclusively in Pennsylvania. I have never performed any work on behalf of Lewis Tree in New York. Similarly, all of the employees I

supervise as General Foreman perform their work exclusively in Pennsylvania. No Lewis Tree employee has ever performed work in New York under my supervision.

5. I do not travel to New York for any personal reasons, such as vacations, to visit friends or family, or to go shopping.

6. In my personal capacity, I do not transact any business in New York or contract anywhere to supply goods or services in New York.

7. In my personal capacity, I do not derive any revenue from interstate or international commerce. I do not solicit business in New York, nor do I derive any revenue from any goods used or consumed in New York, nor services rendered in New York.

8. In my role as a General Foreman, I have no involvement with Lewis Tree employees' requests for health, medical or disability-related leaves of absence. Per Lewis Tree's policy, if an employee tells me that he/she has a health issue, I immediately instruct the employee to call Lewis Tree's employee benefits department. After doing so, I have no further involvement in the process and await communication from the benefits department to inform me as to whether the employee will be out on leave for a certain period of time and when the employee is scheduled to return to work, if at all. I do not inquire about an employee's specific health or disability concern. I do not request, obtain, handle, or maintain related documentation from the employee. I do not advise the employee about what leave, if any, that may be available, and I have no involvement in considering or making any determination on health, medical or disability-related leave requests.

9. I had do not know what communications, if any, Plaintiff Eddie Garcia had with Lewis Tree regarding his health condition or any related leave of absence. I did not make any decision on or have any involvement with any decision that was made by Lewis Tree regarding

any medical leave of absence, the termination of his employment, or any of the decisions and actions at issue in this litigation.

10. It is my understanding that Mr. Garcia was out on leave for a period of time, and that his employment was terminated on or about May 22, 2020, but I was not involved in any way in that decision. I learned of this decision on May 22, 2020 when I received an email from Lewis Tree's Leave Administrator titled "Termination Notice: Eddie Garcia 1012546" that stated as follows:

The above employee has been separated from Lewis Tree Service effective 5/22/2020 for not fulfilling the requirements to remain on medical leave. I will notify the individual and process the termination in UltiPro for you. If you are contacted by this employee, please refer them to the Benefits Department.

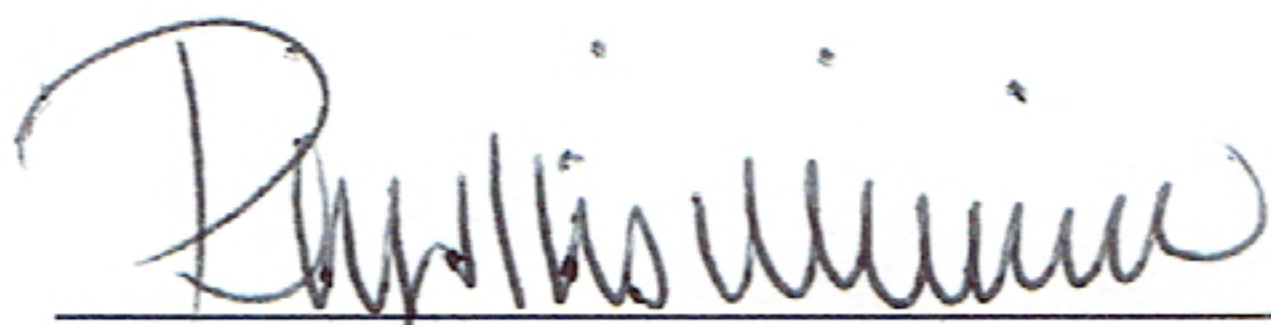
Please let me know if you have any questions or concerns.

This email was the first time I became aware that Mr. Garcia's employment was terminated. I had no involvement with the decision.



Robert P. Gaston

Sworn before me this 5th day
of August, 2021.



Notary Public

